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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,184	02/20/2002	Luke R. Magee	8872Q	7356
27752	7590	06/15/2004		
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224				
			EXAMINER STEPHENS, JACQUELINE F	
			ART UNIT 3761	PAPER NUMBER 10

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/079,184

Applicant(s)

MAGEE ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-9 and 14-19 is/are allowed.
- 6) ☒ Claim(s) 1,10-13,20-22 and 24 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4.9</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Pozniak et al. USPN 6045543.

As to claim 1, Pozniak discloses a disposable absorbent article to be worn about the lower torso of a wearer, the absorbent article comprising a topsheet 24, backsheet 22, and a core 26 disposed therebetween. The absorbent article includes at least one serviceable indicium that facilitates an easy, intuitive change by aligning the article relative to an anatomical feature of the wearer or a component of the article, thereby enhancing the fit and corresponding performance of the article (Abstract).

As to claims 20 and 24, Pozniak discloses a disposable absorbent article to be worn about the lower torso of a wearer that facilitates an easy, intuitive change while the wearer is standing or lying down, the disposable absorbent article having a first waist region with a first end edge, a second waist region with a second end edge, a crotch region interposed therebetween, a longitudinal axis, a transverse axis, and a pair of opposing longitudinal side edges joining the first end edge and the second end edge,

the disposable absorbent article comprising: a fastening system for releasably securing the first waist region to the second waist region and providing a first fit and a second fit, wherein the first fit provides a loose fit enabling the article to be maneuvered about the wearer's lower torso during fitting and the second fit provides a secure fit about the wearer's waist, the fastening system including instructional serviceable indicia providing information corresponding to the first fit and second fit (Abstract, Figure 5; col. 13, lines 1-55).

As to claim 21, Pozniak discloses the fastening system further comprises a primary landing member and a secondary landing member wherein the instructional serviceable indicium are disposed on the primary landing member and the secondary landing member (Figure 5).

As to claim 22, the limitation of a standing and secured fit are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

3. Claims 10-13 are rejected under 35 U.S.C. 102(a) as being anticipated by Cammarota et al. USPN 6307119.

As to claim 10, Cammarota discloses a disposable absorbent article 20 to be worn about the lower torso of a wearer that is capable of facilitating an easy, intuitive change, the disposable absorbent article including a body-facing surface and a garment facing surface; a first waist region 22 with a first end edge, a second waist region 24 with a second end edge, and a crotch region 26 interposed therebetween; a longitudinal axis 36 and a transverse axis; and a pair of opposing longitudinal side edges joining the first end edge and the second end edge; the disposable absorbent article comprising: a backsheet having a body-facing surface and a garment-facing surface, at least one externally visible serviceable indicium disposed on a portion of the disposable absorbent article (Figure 1). The article further comprises a core disposed on the body-facing surface of the backsheet; wherein the at least one externally visible serviceable indicium provides a contoured pattern that complements a shape of the core (Figures 2-5).

As to claims 11-13, Cammarota discloses the core has a contoured shape to accommodate fit in the crotch region and the at least one externally visible serviceable indicium 66/60 provides a contoured pattern that complements the contoured shape of the core (Figures 2-5). As broadly as claimed, the core shape is an idealized core shape, which can entail an hour glass configuration.

Allowable Subject Matter

4. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is an examiner's statement of reasons for allowance: The overall claimed structure an instructional serviceable indicia comprising graphics of characters wearing the disposable article and illustrating the configuration of the article during the first fit and the second fit is neither anticipated nor rendered obvious by the prior art of record.

5. Claims 2-9 and 14-19 are allowed. The following is an examiner's statement of reasons for allowance: As to claim 2, the overall structure of an absorbent article having ear panels with indicia combined with a crotch portion with indicia is for providing proper alignment of the article about the wearer is neither anticipated nor rendered obvious by the art of record. As to claim 14, the overall claimed structure a disposable absorbent article in combination with an internally visible serviceable indicium, which aligns with an anatomic feature of a wearer is neither anticipated nor rendered obvious by the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
Art Unit 3761

